

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION**

**THE ESTATE OF ROOSEVELT  
HOLLIMAN; and MICHELLE  
LUMZY, individually and in her  
capacity as the Administratrix of  
the Estate of Roosevelt Holliman**

**PLAINTIFFS**

**V.**

**NO. 4:22-CV-75-DMB-JMV**

**MARSHAL TURNER, et al.**

**DEFENDANTS**

**ORDER**

On October 26, 2023, United States Magistrate Judge Jane M. Virden issued a Report and Recommendation (“R&R”) recommending denial of the plaintiffs’ “Motion for Entry of Default of Defendant Lee Simon”<sup>1</sup> because “[t]he plaintiffs have not carried their burden of proving that service was adequate with respect to Defendant Lee Simon.” Doc. #112 at PageID 637. The R&R warned that “[f]ailure to timely file written objections to the proposed findings[,] conclusions and recommendations ... will bar ... attacking on appeal unobjected-to proposed factual findings and legal conclusions accepted by the district court” “except upon grounds of plain error.” *Id.* at PageID 637–38. No objection to the R&R was filed.

Under 28 U.S.C. § 636(b)(1)(C), “[a] judge of the court shall make a de novo determination of those portions of the report ... to which objection is made.” “[P]lain error review applies where a party did not object to a magistrate judge’s findings of fact, conclusions of law, or recommendation to the district court despite being served with notice of the consequences of failing to object.” *Quintero v. State of Texas – Health and Hum. Servs. Comm’n*, No. 22-50916,

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<sup>1</sup> Doc. #102.

2023 WL 5236785, at \*2 (5th Cir. Aug. 15, 2023) (cleaned up). “[W]here there is no objection, the Court need only determine whether the report and recommendation is clearly erroneous or contrary to law.” *United States v. Alaniz*, 278 F. Supp. 3d 944, 948 (S.D. Tex. 2017).

Because the Court reviewed the R&R for plain error and concludes the R&R is neither clearly erroneous nor contrary to law, the R&R [112] is **ADOPTED** as the order of the Court. The plaintiffs’ “Motion for Entry of Default of Defendant Lee Simon” [102] is **DENIED**.

**SO ORDERED**, this 14th day of November, 2023.

/s/Debra M. Brown  
**UNITED STATES DISTRICT JUDGE**